IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5998 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5998 of 1999

MR DF AMIN for Petitioner No. 1

MR KP RAVAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 14/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has preferred this petition with a prayer to direct the respondent authorities to

forthwith release the amount of pension and gratuity admissible to the petitioner from 01/06/95 onwards, taking into account the revision in pension, effective from 01/01/96 as per the Revision of Pay Rules, 1998 with all consequential benefits.

2.0 The brief facts of the case are as follows;

2.1 The petitioner retired from the service of the respondent State Government on 31/05/95 on attaining the age of superannuation, and accordingly, handed over the charge of D.S.P.. It is the case of the petitioner that the second respondent by letter dated 06/04/95 had ordered the stoppage of payment to the petitioner, on the ground of recovery of rent for his occupation of the Quarters at Anand after transfer to Vadodara and for residing in the Circuit House at Vadodara.

2.2 It is the case of the petitioner that on account of the aforesaid reasons, the petitioner's pension and gratuity have not so far been fixed or paid by the respondents, although more than four years have elapsed since his retirement from service.

3.0 Mr.J F Shah for Mr.D F Amin for the petitioner has submitted that pension is not a bounty payable at the sweet will of the respondents, but, is a valuable right of the petitioner. He has further submitted that there is no provision under the Bombay Civil Service Rules or under the Revised Pension Rules by which the respondents can withhold the pension and gratuity of a person for the recovery of a disputed amount of rent. He has, therefore, contended that the action of the respondents, withholding the pensionary benefits of the petitioner, is unauthorized, illegal and arbitrary and is in violation of the principles enunciated in the Constitution of India, and therefore, it deserves to be quashed and set aside.

3.1 Mr.J F Shah for Mr.D F Amin for the petitioner has submitted that the petitioner has retired on 31/05/95. Subsequently, an amount of Rs.1253/- per month was sanctioned as monthly pension for the period from 01/06/95 to 31/12/95, excluding an amount of Rs.626/- as commuted value. From 01/01/96 onwards, he was paid the Revised pension under the R.O.P. Rules, 1998 for the period from 01/01/96 to 31/12/99. The Revised pension was fixed at Rs.5459/- from which the commuted value of pension of Rs.626/- was deducted and net pension amounting to Rs.4833/- per month was sanctioned. An amount of Rs.1,16,320/- was payable as Gratuity to the

petitioner, but, as an amount of Rs.96,538/- was recovered by the respondents, the petitioner received only Rs.19,782/-.

3.2 The commuted value of the pension which was payable to the petitioner as on 01/06/95 was Rs.80,980/-. The said amount was paid to the petitioner on 24/01/2000. The claims of the petitioner with regard to interest are as follows;

(i) Interest for the period from 01/06/95 to 24/01/2000 on the commuted value of pension of Rs.80,890/-.

(ii) Interest for delayed payment of pension amount of Rs.12,271/- for the period from 01/06/95 to 31/12/95.

(iii) Difference of Revised pension @ Rs.4833/per month for 48 months, amounting to Rs.2,31,984/- for the period from 01/01/96 to 31/12/99.

(iv) Amount in respect of Gratuity for 55 months amounting to Rs.1,16,320/- for the period from 01/06/95 to 31/12/99.

4.1 Having considered the averments made in the petition as also the arguments advanced by the learned advocates for the parties, I am of the opinion that this petition merits acceptance. The respondents ought not to have withheld the pensionary benefits of the petitioner for the recovery of the disputed amount of rent. The claim of the petitioner, is therefore, required to be accepted.

4.2 Learned counsel for the petitioner has also submitted that the retiral benefits were denied to the petitioner due to the fault on the part of the respondents and therefore the petitioner is entitled to get interest on the arrears of the amount to be paid to the petitioner. In this behalf he relied upon a decision of the Apex Court in the case of Baiji Nath Gupta Vs. State of Bihar and others, reported in (1996) 10 SCC 297 (= 1997 SCC (L&S) 71), wherein it is held that if the pension was not determined in accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled to payment of interest for the delayed payment of pension and if the Government was responsible for the delay, necessarily the appellant would be entitled to the

payment of interest on the delayed payment. He submitted that similar view has been taken by the Apex Court in the case of (1) Uma Agrawal Vs. State of UP, reported in AIR 1999 SC 1212 (199) 3 SCC 438: 1999 SCC (L&S) 742: (1999)2 CLR 156: (1999) 2 SLR 22: (1999)1 LLJ 1335), (2) Vijay L. Mehrotra Vs. State of U.P. and others, reported in (2001) 9 SCC 687 (=2000 Lab IC 2663: (2000)2 LLJ 253: (2000)3 LLN 1: (2000) 2 SLR 686) and (3) Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., reported in AIR 2003 SC 1526. Learned counsel for the respondent is unable to dispute the aforesaid proposition.

5.1 For the foregoing reasons, this petition is allowed. Respondent no.2 herein is directed to pay interest @ 9% per annum to the petitioner for the period referred in para 3.2, within a period of six months from the date of receipt of this order. If any further delay is caused in the payment of the said amount, then the amount which shall accrue during the said period of delay, will be recovered from the account of the erring Officer. It is, however, clarified that since by order dated 26/07/93, the recovery of Rs.63,863/- was cancelled, the petitioner would be entitled for the said amount and the said amount is directed to be paid to the petitioner hereinabove. Rule is made absolute to the above extent with no orders as to costs.

(K. S. Jhaveri, J.)

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